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SUBJECT: NICARAGUA: GON PROMISES BETTER COOPERATION ON ADVANCING CASE RESOLUTION DURING BILATERAL PROPERTY CLAIMS REVIEW

REFS: A) SECSTATE 104850, B) MANAGUA 883, C) MANAGUA 1186, D) 02 MANAGUA 877, E) MANAGUA 830

SUMMARY

¶1. (SBU) During the December 11-12 bilateral review of the Government of Nicaragua's (GON) property claims resolution process, Attorney General Hernan Estrada acknowledged that while the U.S. Government (USG) would not accept dismissals of U.S. citizen claims without a fair and transparent appeals process, it was unfortunate that the USG and GON did not agree on the status of these cases, asserting that it was "his responsibility to protect the national interests, social stability, and sovereignty of the country." On U.S. claims under GON control, the Attorney General said the National Police and the National Corporations of the Public Sector (CORNAP), a state holding company, will join a commission already formed to deal with cases under the control of the Nicaraguan Army to advance the resolution of all property claims under possession of the government. With regard to the lack of transparency in the GON's compensation offers, Estrada agreed to put more information on the Attorney General Office's website about the claims appraisal process, but remained non-committal regarding providing detailed explanations on GON settlement proposals to claimants. Estrada also announced the formation of a liaison office to handle U.S. inquiries and a Nicaraguan Supreme Court commission to review U.S. cases that languish in the courts.

¶2. (SBU) Although the bilateral review allowed the U.S. delegation to express our concerns about the GON's claims resolutions process, the GON did not make significant concessions on some important issues, such as reversing Decree 3 (1979) and 38 (1979) dismissals or providing detailed explanations of settlement offers. From the GON's perspective, the bilateral review was an opportunity to stress to Washington the importance it gives to the overall U.S.-Nicaragua bilateral relationship. We believe that Estrada's full participation in the bilateral review was a signal that the GON wants to work with the USG on several important issues as much as possible. We are cautiously optimistic that the GON will work with us during the waiver year to resolve claims on all three Section 527 benchmarks (Ref A), and reduce the number of dismissed claims, if only for the purpose of avoiding further tension in the overall bilateral relationship. End Summary.

BILATERAL REVIEW PARTICIPANTS

¶3. (U) Christopher Webster, Director of the Office of Central American Affairs (WHA/CEN), led the U.S. delegation, which included:

--Jeffrey D. Kovar, Assistant Legal Advisor for International Claims and Investment Disputes (L/CID)
--Heather Goethert, Office of Investment Affairs

(EEB/IFD/OIA)

--Albert Kraaimoore, Nicaragua Desk Officer (WHA/CEN)
--Joe Ripley, Economic Counselor, U.S. Embassy
--Shante Moore, Property Officer, U.S. Embassy
--Leonidas Henriquez, Senior Property Officer Assistant,
U.S. Embassy

Note: U.S. Ambassador Robert Callahan opened the talks and Deputy Chief of Mission Richard Sanders closed them.

¶4. (U) Attorney General Hernan Estrada led the Nicaraguan delegation, which included:

--Yara Perez, Property Superintendent
--Ruth Zapata, Head, Office of Assessment and Indemnification (OCI)
--Jeanette Garcia, President, National Confiscations Review Commission (CNRC)
--Magally Bravo, Administrative Director for Property Issues, Office of the Attorney General
--Bruno Gallardo, Senior Legal Advisor to the Minister of Finance
--Dinorah Peugnet, Head of the Fiscal Cadastral Office, National Institute for Territorial Surveying (INETER)
--Jose Zapata, Head, Office of Government Accounting

POLITICAL TENSION SURROUNDS BILATERAL REVIEW

¶5. (U) The bilateral review was held amid tensions in the GON's relations with the United States and the international community, as well as local discontent with the government as a result of the fraud that occurred during the municipal elections on November 9. On November 24, Ambassador John Danilovich, CEO of the Millennium

Challenge Corporation (MCC), sent a letter to Alberto Guevara Obregon, Nicaraguan Minister of Finance and Chairman of the Board of Nicaragua's Millennium Challenge Account (MCA-Nicaragua), to announce the suspension of disbursements for projects totaling \$64 million. On December 8, four members of the U.S. House of Representatives sent a bipartisan letter to the Secretary urging the exclusion of Nicaragua from the Central America/Dominican Republic/United States Free Trade Agreement (CAFTA-DR). On December 11, the MCC's Board of Directors decided to maintain the suspension of its disbursements for an additional 90 days.

¶6. (U) European donors had announced the suspension of aid for the remainder of 2008 and into 2009. In 2008, the Budget Support Group disbursed only \$15 million of \$115 million in assistance to Nicaragua because of concerns about the lack of budget transparency, governance issues, and widespread fraud during the November 9 municipal elections. Opposition members would not allow legislation to be considered until a recount had been conducted of the municipal elections. The opposition sought a vote to annul the elections in lieu of a recount. Nicaraguan citizens and civil society continued to protest the elections. A paralyzed National Assembly could not take action on a revised budget for 2008, or the government's budget for 2009, causing the International Monetary Fund to hold off on the third disbursal of its Poverty Reduction and Growth Facility to the Nicaraguan Central Bank.

DAY I: U.S. DELEGATION SETS TONE

U.S. CLAIMS TO REMAIN A PRIORITY

¶7. (SBU) On December 11, the Ambassador and Estrada opened the talks. Ambassador Callahan acknowledged that the bilateral review was taking place during a difficult period in the relationship and there is increasing attention from the U.S. Congress vis-`-vis Nicaragua. The Ambassador emphasized that U.S. citizen property claims carry a high profile in the U.S. Congress and remain a priority for the USG. Webster and Kovar pointed out Nicaragua's Section 527 obligations [of the Foreign Relations Authorization Act Fiscal Years 1994 and 1995] to show progress on the Secretary's benchmarks to seek another annual waiver of Section 527.

¶8. (SBU) Webster and Kovar outlined the following USG concerns about the GON's property resolution process: 1) U.S. claims dismissed for administrative reasons (lack of paperwork and/or proof of

confiscation of the property in question) and under Decrees 3 (1979) and 38 (1979) that mandated the confiscation of property of individuals deemed Somoza family members or "allies" of the former regime; 2) U.S. claims under control of the GON, including the Nicaraguan Army; 3) the lack of transparency in appraising settlement offers to claimants; 4) U.S. property cases that languish in courts; and 5) cooperation between the Embassy Property Office and the GON (Ref B). In fact, these topics constituted the agenda for the bilateral review.

TOPIC I: DISMISSED CLAIMS: PROTECTING NAT'L INTERESTS

¶9. (SBU) Office Director Webster informed the GON delegation that the USG does not recognize 146 claims administratively dismissed and for reasons contained in Decrees 3 and 38, as resolved claims. Webster reiterated that all U.S. claims should be subject to a fair and transparent process. Kovar asserted that the Attorney General's Office sudden dismissal of these claims that had been previously accepted by the CNRC without prior notice, a hearing, or an adequate explanation for the basis of the dismissal violated fundamental notions of due process. Estrada acknowledged that the USG would not recognize dismissals as "resolved." He argued, however, that the Decrees 3 and 38 have the "force of law," and that "it was his responsibility to protect the national interest, assure social stability, and defend the sovereignty of the country." OCI Head Zapata added that Law 411 (2001), which established the Office of the Attorney General, provided the authority to review past actions taken by previous governments, to protect the national interest and conserve the national budget.

¶10. (SBU) Senior Legal Advisor to the Minister of Finance Gallardo argued that the USG should respect Nicaraguan law. Without an example, he claimed that there were several U.S. claimants who worked for Somoza or former members of the National Guard. He added that claimants subject to Decree 3 and 38 could go to court to overturn these decisions. Assistant Legal Advisor Kovar pointed out that the Nicaraguan Constitution forbids confiscation of property. Even if Decrees 3 and 38 seizures were considered authorized under Nicaraguan law, he added, compensation was required under international law.

¶11. (SBU) Estrada asserted that the GON has demonstrated flexibility on Decree 3 and 38 dismissals, and had compensated such claimants, such as Leonidas Guadalupe, a U.S. claimant. Goethert asked whether the process for reviewing and/or appealing these dismissals would apply to other Decree 3 and 38 dismissals. Estrada and his colleagues did not answer the question, but CNRC President Garcia explained that all administrative dismissals could be overturned if claimants provided necessary documentation. She added that dismissals were not final until served on the claimants, and in most cases the government had not been able to serve them. Once notified, however, claimants had just 10 days to appeal. Kovar welcomed the news that the dismissals were not final, but requested that the GON show flexibility on the time allotted to file an appeal. Ten days to appeal the sudden dismissal of a claim after waiting years without a response does not seem fair. Garcia asked whether the Embassy could act as the addressee to notify claimants. Kovar replied that the Embassy could not accept official notification on behalf of the claimants.

TOPIC II: CLAIMS UNDER GOVERNMENT CONTROL

¶12. (SBU) Webster pressed Estrada to make significant progress on U.S. claims for property under government control, noting that the GON resolved only one claim under this Section 527 benchmark during the 2007-08 waiver year, and the Nicaraguan Army had not resolved any claims since the 2005-06 waiver period. OCI Head Zapata said the GON is working diligently to resolve such claims. She highlighted that the ad hoc committee established to deal with claims for properties held by the Nicaraguan Army in August (Ref C) is working with U.S. claimant Juan Barreto to resolve his 29 claims (Refs D,E). Zapata said the Attorney General's Office is working with government ministries and the Nicaraguan National Police to compensate claimants or return their property, as in the case of U.S. citizen Elmer Hidalgo, whose property is controlled by the Jalapa Police (northern Nicaragua). Zapata asked the U.S.

delegation to urge claimants to accept indemnification bonds (BPIs) for properties controlled by CORNAP, the government's property management company, because several of the properties have multiple claims against them.

TOPIC III: COMPENSATION

¶13. (SBU) Office Director Webster urged Estrada to develop a transparent process to explain to U.S. claimants how the government determines compensation and include improvements made to their properties to increase the final settlements. Webster asked whether the GON had a policy to use two cadastral tables, one to determine compensation offers and the other to assess property taxes [Note: The Property Office received a copy of a letter from Estrada dated November 6, 2007, instructing the head of INETER to use one cadastral table to determine compensation offers and another to assess property taxes. Estrada justified using two cadastral tables as a money saving measure for the government. End Note.] Peugnet responded that the GON was not implementing this policy and used only a single cadastral table. She provided a detailed PowerPoint explanation of the method used to calculate the value of a property.

¶14. (SBU) OCI Head Zapata stated that Nicaraguan law does not require the GON to negotiate with claimants. She explained that claimants have two chances to appeal compensation offers, once with OCI and once with the Office of the Property Superintendent. She explained that the GON could not provide detailed explanations on compensation offers until the software was upgraded to allow the compilation of data in a comprehensible manner. Webster asked Estrada to publish the information on the property claims compensation process, including INETER's regulations for conducting appraisals, on the Attorney General's website. Estrada agreed and the information was placed on the website the following day, December 12.

TOPIC IV: CASES IN COURT

¶15. (SBU) Assistant Legal Advisor Kovar asked Estrada to do what he could to help move forward U.S. citizens' cases languishing in the courts. He noted that some claimants have waited 15 years for a court decision. Estrada agreed that the judicial system was inefficient, but noted that it functioned as an independent branch of the government. Kovar also raised concerns about Estrada's August 22 letter to the Embassy outlining the GON's policy of no longer pursuing cases in court to recover property on behalf of claimants, and protecting individuals who illegally controlled these properties. Estrada responded that his policy of completing the property transfers under Laws 85 (1990), 86 (1990), and 88 (1990),

also known as the "Pinata Laws," was developed to maintain social peace and stability, and promote national security [Note: These laws were passed on the eve of the first Sandinista government to legally transfer property to supporters of the National Sandinista Liberation Front. End Note.] He told us that this policy affected six U.S. cases in the courts and he planned to petition the courts to rule in favor of the occupants. He added that U.S. claimants should either accept BPIs or file their own lawsuit to recover the property.

¶16. (SBU) Webster challenged the policy, arguing that the unwillingness to pursue court cases filed on behalf of claimants created economic and social insecurity and instability, and undermined the rule of law. Foreign and local entrepreneurs would be reluctant to invest in Nicaragua if the government did not fulfill its legal obligations and defend the rule of law. Director for Property Issues Bravo proceeded to defend the GON's policy under the precept that Nicaraguans had a right to a decent life. In her presentation, she omitted a discussion of Articles 27 and 44 of the Nicaraguan Constitution. Article 27 grants equal protection under the law and the right to due process to foreigners in Nicaragua. Article 44 states that the confiscation of property is forbidden; any expropriation of property requires cash compensation in advance.

TOPIC V: COOPERATION

¶17. (SBU) Webster pressed Estrada to improve cooperation at the

working level to advance the resolution of claims. He argued that the Property Office should be able to call or e-mail its GON counterparts to follow up on claims. Webster underscored that formal communication between only the Ambassador and Attorney General on property claims limits case resolution. Estrada was non-committal, but announced that he was considering appointing a liaison within the Office of the Attorney General to answer inquiries from U.S. claimants and the U.S. Embassy, pending budgetary approval by the National Assembly. Estrada asserted that it was important to maintain a buffer to allow his limited staff time to focus on the work of the Office and remove the temptation of corruption. He presented six U.S. claims in which he alleged past irregularities in their resolutions. Webster commented that more communication between the Property Office and GON is needed not only to resolve claims, but also to address these concerns. Webster emphasized that the USG does not condone corruption, noting that if the GON has credible evidence of illicit activity by U.S. claimants, the Attorney General's Office should pass the information to the Embassy to take appropriate action.

DAY II CLOSING SESSION: SOME CONCESSIONS

GON SEEKS UNDERSTANDING ON DISMISSALS

¶18. (SBU) The second day of the bilateral review focused on a way forward to resolve claims. Before Estrada spoke, Gallardo gave an incoherent explanation as to why the USG should not have a "black and white vision of the property situation." He asked the U.S. delegation to consider Nicaragua's growing public debt as a result of property compensations, and alleged that some U.S. citizens were either involved in bribing GON officials in previous governments to receive disproportionate compensations, or they did not pay taxes or service their debt obligations to banks and other financial institutions. Gallardo stated that the GON should review all claims that have been previously settled to ensure that the government's national and budgetary interests are protected.

¶19. (SBU) Estrada aggressively defended his Decree 3 and 38 dismissals. It appeared he received instructions from President Daniel Ortega on the GON's response to USG concerns. Estrada argued that Decree 3 and 38 dismissals are sensitive issues for the government. He asserted that President Ortega wanted to resolve U.S. claims but the GON must also protect Nicaraguan national interests and enforce the law. He acknowledged, however, that the USG had clearly conveyed that it would not accept dismissals and that, for reasons of workload, he did not plan to review previously settled cases.

NICARAGUAN PROPOSALS

¶20. (SBU) Estrada proposed the following measures to advance the resolution of U.S. claims:

--Establishment of a liaison to handle U.S. Claims Inquiries [provided that the National Assembly approves funding]: the liaison will handle inquiries on U.S. citizen claims. U.S. citizen

claimants and the Property Office could routinely contact the liaison to inquire about the status of pending claims, and report directly to Estrada on a daily basis.

--Establishment of a Commission to Review U.S. Claims Languishing in the Courts: the Nicaraguan Supreme Court and the Attorney General's Office will form a commission to address U.S. citizen property cases that languish in the courts, particularly the National Property Appeals Court. The Property Office and the Attorney General's Office will identify U.S. citizen court cases to determine if the Supreme Court could advance their adjudication.

--Updating Attorney General's Webpage with Information about the Claims Resolutions Process: Estrada agreed to add information regarding Government of Nicaragua's claims resolution process, including a flow chart of the offices involved in determining compensation offers. This information was uploaded to the website on December 12.

--National Police and CORNAP to Join "Ad Hoc" Commission to Resolve

Claims under Government Control: the National Police and CORNAP will be invited to join the existing "ad hoc" commission that deals with claims under control of the Nicaraguan Army to advance the resolution of all private properties taken by the GON without payment of compensation to claimants.

¶21. (SBU) Office Director Webster welcomed these initiatives as positive steps to advance the resolution of claims, but reiterated that the GON must show progress on the three benchmarks outlined by the Secretary in her letter dated July 29, 2008 (Ref A). He announced that the Embassy would share its list of pending claims with the GON to identify discrepancies. The Property Office and the GON will review their perspective lists during the next Working Group meeting on December 18 (septel).

FOREIGN MINISTER SANTOS: SOME DISMISSALS JUSTIFIABLE

¶22. (SBU) The U.S. delegation accompanied by Ambassador Callahan met with Foreign Minister Samuel Santos on December 12 after the conclusion of the bilateral review to reiterate USG concerns about the GON claims resolution process and to provide an assessment of the bilateral review. Estrada attended. Office Director Webster said the bilateral review was productive in that there were frank discussions concerning the GON's property claims resolution process. He added that he hoped that the new proposals suggested by Estrada would accelerate the resolution of claims. Santos expressed his satisfaction with the results of the bilateral review and reassured the U.S. delegation that the GON is committed to resolving U.S. citizen claims. He explained that Decree 3 and 38 dismissals are sensitive issues for the GON, alleging that one of our claimants who was a member of the National Guard during the Somoza dictatorship had physically tortured him [Note: Post is investigating Santos' allegation. End Note.] Santos said there are two or three U.S. citizen claims that the USG should investigate to fully understand the background of their cases.

¶23. (SBU) At the conclusion of the meeting, Estrada pulled Webster aside to say that he occupied an influential position in the State Department vis-`-vis the U.S.-Nicaraguan bilateral relationship. Estrada told Webster that President Ortega had instructed him to underscore the importance of the bilateral relationship and that the GON wanted to continue working together in areas of mutual interest.

COMMENT

¶24. (SBU) Although the bilateral review allowed the USG to express concern about the GON's claims process, the GON did not make significant concessions on important issues, such as reversing Decrees 3 and 38 dismissals or providing detailed explanations of settlement offers. From the GON's perspective, the bilateral review was an opportunity to stress the importance it places on the overall U.S.-Nicaragua bilateral relationship. We believe that President Ortega ordered Estrada's full participation in the bilateral review to signal that the GON wants to work with the USG as much as possible.

¶25. (SBU) We are cautiously optimistic that the GON will meet all three Section 527 benchmarks this waiver year, and reduce the number of dismissed claims, if only to avoid increasing bilateral tension. The Ambassador plans to conduct a mid-year review of the Section 527 process with Attorney General Estrada in March. By then, we should be able to judge whether the GON's newfound spirit of cooperation is legitimate.

¶26. (U) This cable has been cleared by WHA/CEN Director Christopher Webster.

SANDERS